

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CAMBRIDGE RETIREMENT SYSTEM, on
Behalf of Itself and all Others Similarly
Situating,

Plaintiff,

v.

INVACARE CORPORATION, *et. al.*,

Defendants.

Case No. 1:13-cv-1165-CAB

CLASS ACTION

LEAD PLAINTIFF'S MOTION TO MODIFY SCHEDULING ORDER

Lead Plaintiff Government of Guam Retirement Fund (“Guam” or “Lead Plaintiff”) respectfully submits this motion to modify the Court’s October 1, 2013 scheduling order.

On May 24, 2013, Cambridge Retirement System filed its class action Complaint For Violations Of The Federal Securities Laws [ECF No. 1]. On July 23, 2013, Guam filed its Motion For Appointment As Lead Plaintiff And Approval Of Selection Of Lead Counsel [ECF No. 8]. On October 1, 2013, the Court entered its Order appointing Guam as Lead Plaintiff and approving Guam’s selection of Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel for the class [ECF No. 32] (the “October 1 Order”). Guam has previously informed the Court that, if appointed as Lead Plaintiff, it intends to file an amended complaint pursuant to Federal Rule of Civil Procedure 15(a). *See* ECF Nos. 16, 21, 27, 31. In addition, Guam is mindful that the parties have previously submitted proposed stipulated schedules for the filing of an amended complaint and Defendants’ response to the amended complaint [ECF Nos. 16, 31], and that the Court’s October 1 Order provides for a more abbreviated schedule.¹

In particular, the October 1 Order provides only fourteen (14) days for Lead Plaintiff to file its amended complaint. Lead Plaintiff respectfully submits that fourteen days does not provide sufficient time for Lead Plaintiff to adequately investigate, prepare, and file the amended complaint in this complex matter in accordance with the applicable pleading standards. In brief, this action involves allegations of violations of the federal securities laws by multiple defendants – *namely*, the misrepresentation to and concealment from investors of extensive operational, quality, and regulatory deficiencies at Invacare manufacturing and corporate facilities in two states (Florida and Ohio), including in contravention of U.S. Food and Drug Administration guidelines and Current Good Manufacturing Practices – over an approximately 17-month class period. As the Court is aware, securities fraud claims must satisfy the particularity pleading requirements of Federal Rule of Civil Procedure 9(b). *See, e.g., PR Diamonds, Inc. v. Chandler,*

¹ “Defendants” refers to Invacare Corporation, Gerald B. Blouch, A. Malachi Mixon III, and Robert K. Gudbranson, collectively. In advance of filing this motion, Lead Counsel met and conferred with counsel for Defendants.

364 F.3d 671, 681 (6th Cir. 2004). Further, the Private Securities Litigation Reform Act (“PSLRA”), 15 U.S.C. § 78u-4, *et seq.*, imposes additional and more “[e]xacting pleading requirements” for pleading scienter in a securities fraud case by “requir[ing] plaintiffs to state with particularity both the facts constituting the alleged violation, and the facts evidencing scienter.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007) (internal quotation marks and citation omitted). Moreover, here, as in all federal securities fraud class actions governed by the PSLRA, all discovery is stayed pending a ruling on Defendants’ motion to dismiss Lead Plaintiff’s amended complaint. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iv) (mandatory discovery stay). Accordingly, Guam respectfully submits that it should be permitted reasonable time to conduct and supervise its own investigation concerning the matters at issue in this securities fraud class action, and prepare its amended complaint in accordance with Rule 9(b) and the PSLRA. Guam commenced such an investigation even prior to its appointment as Lead Plaintiff, and its investigation remains active and ongoing.

Guam believes that in light of the complexity of this action, and the need to conduct and oversee its own investigation into the facts and circumstances giving rise to this action (including determining whether support exists to modify claims, defendants and/or the class period as alleged in the initial Cambridge complaint) while all discovery is presently stayed, additional time is warranted for the preparation and filing of Lead Plaintiff’s amended complaint. The proposed modification extends the date for filing the amended complaint by only an additional thirty-two (32) days but does not otherwise extend the briefing schedule for Defendants’ response to the amended complaint. Guam submits that this modest extension will not cause any prejudice to either party or unduly delay the proceedings in this matter.

For all of the reasons stated above and subject to the Court’s approval, Lead Plaintiff respectfully requests that the Court enter the accompanying [Proposed] Order and schedule for the filing of an amended complaint and Defendants’ response to the amended complaint, as follows:

1. Lead Plaintiff's amended complaint shall be filed on or before November 15, 2013;
2. Defendants shall answer, move or otherwise respond to Lead Plaintiff's amended complaint on or before December 16, 2014;
3. Lead Plaintiff shall file its opposition to any motion to dismiss the amended complaint on or before January 15, 2014; and
4. Defendants shall file any reply brief to Lead Plaintiff's opposition on or before January 29, 2014.

Dated: October 2, 2013

Respectfully submitted,

/s/ Benjamin Galdston

Benjamin Galdston

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*Local Counsel for Lead Plaintiff Government
of Guam Retirement Fund*

[PROPOSED] ORDER

Having considered Lead Plaintiff's motion to modify the scheduling order, the Court hereby orders as follows:

5. The schedule for filing an amended complaint and Defendants' responses thereto previously set by the Order of the Court dated October 1, 2013 [ECF No. 32] is vacated.

6. Lead Plaintiff's amended complaint shall be filed on or before November 15, 2013;

7. Defendants shall answer, move or otherwise respond to Lead Plaintiff's amended complaint on or before December 16, 2014;

8. Lead Plaintiff shall file its opposition to any motion to dismiss the amended complaint on or before January 15, 2014; and

9. Defendants shall file any reply brief to Lead Plaintiff's opposition on or before January 29, 2014.

IT IS SO ORDERED

Dated: _____

Honorable Christopher A. Boyko
United States District Judge

CERTIFICATE OF SERVICE

A copy of the foregoing was filed electronically this 2nd day of October, 2013. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Benjamin Galdston